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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),)
Table of Allotments,) MM Docket No. 97- ____
FM Broadcast Stations,) RM- ____
(Kosciusko and Madison, Mississippi))

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Boswell Broadcasting, Inc., ("Petitioner"), licensee of Station WBKJ-FM, Kosciusko, Mississippi, pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the return of a Petition for Rulemaking filed by Petitioner on September 29, 1997. Petitioner had requested the initiation of a rulemaking proceeding proposing the reallocation of Channel 286C1 from Kosciusko, Mississippi, to Madison, Mississippi, and the modification of Station WBKJ's license accordingly. In a letter dated April 6, 1998 (hereinafter "Return Letter"), the Petition for Rulemaking was returned. Reconsideration of this return is required for the following reasons:

1. Section 1.420(I) of the Commission's Rules permits the modification of a station's license to specify a new community of license. *Amendment of Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community"). Under these procedures, the Commission compares the existing arrangement of allotments with the proposed arrangement using its FM priorities. See *Revision of FM Assignment Priorities and Procedures*, 90 FCC 2d 88 (1982).

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2. In its Petition for Rulemaking, Petitioner demonstrated that Madison, Mississippi, a larger community with a population which is expected to reach over 15,000 in the next decade, would receive its first local aural transmission service (priority 3) and would thus be preferred over the smaller community of Kosciusko with a population of 7,415 persons which is already served by Station WKOZ-AM and noncommercial educational Station WJTA(FM). Petitioner also demonstrated that since it was not changing its transmitter site, it was not "moving into" the Jackson Urbanized Area,^{1/} and that Madison was, in any event, an independent community, with needs separate and apart from Jackson. Thus, Petitioner demonstrated, *inter alia*, that Madison has its own city government (Mayor and Aldermen), its own Police Department (with 29 policemen and 11 detectives), its own Fire Department (with two fire stations and 9 full time employees), its own school system (with two high schools, two elementary schools, and two middle schools), its own Water Department, and 356 businesses. (Petition, p. 2)

3. In the Return Letter, the staff stated that the Petition was being returned for two reasons. First, the current allotment did not meet the Commission's mileage separation standards as to two mutually exclusive applications for Channel 285A at Prentiss, Mississippi, and two mutually exclusive applications for Channel 286A at Oxford, Mississippi. The letter asserts that since the Petitioner is not proposing to change sites, the proposed reallocation of Channel 286C1 to Madison would be similarly short-spaced and, thus, the proposal would contravene Section

^{1/} *Georgetown and Garden City, South Carolina*, DA97-1887, released September 5, 1997, *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3532 (1996); and *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995).

73.207 of the Rules. Second, the letter states that the reallocation will not result in any discernible benefit to the public since it does not improve the existing short-spacings, will not provide any new service, and will provide no new opportunity for additional service not already available. The letter asserts that any benefit gained by Station WXST(FM), *sic*, being licensed to Madison would be offset by the loss to Kosciusko.

4. This ruling is incorrect as a matter of law and fact and should be reconsidered and a Notice of Proposed Rule Making issued. The Commission is obligated to treat similarly situated applicants in a similar way. See, *e.g.*, *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C.Cir. 1965). The Commission has not followed such elementary due process in this case. In an almost identical situation, the Commission initiated a rulemaking proceeding, *Newnan and Peachtree City, Georgia*, 5 FCC Rcd 1774 (1990)(NPRM) and reallocated Station WMKJ(FM) from Newnan to Peachtree City, Georgia. 7 FCC Rcd 6307 (1992) (Report and Order). With regard to the short spacing objections raised by another party, the Commission stated that it would consider waiving strict application of Section 73.207 of the Rules "provided that no new short spacing are created, no existing short spacing are exacerbated, and the potential for interference between the currently short-spaced stations is not increased." 7 FCC Rcd at 6308 citing, *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580 (1991). See also *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995). Therefore, in the *Newnan, Peachtree, Georgia* case the Commission not only initiated the rulemaking proceeding, but granted the reallocation. Here, without any reference to this precedent, or any precedent for that matter, the Petition was returned. The facts in the instant case are, in every significant respect, identical to those in *Newnan, Peachtree City* and require that the instant case be treated in a similar manner.

5. It is also significant that all of the applications which are purportedly short-spaced to WBKJ's existing site were filed pursuant to Section 73.215 of the Commission's Rules which specifies that their interfering contour cannot intersect WBKJ's 60 dBu contour. Consequently, the existing site does meet the specifications set forth in Section 73.207. Moreover, these applications will not necessarily be built where indicated in the application. One of the applications for Prentiss (File No. BPH-970130ME) was granted on April 16, 1998, and it is our belief that it may be moved to another site. With regard to Oxford, there are actually four mutually exclusive applications for Oxford, not two as stated in the Return Letter. These applications have been filed, but not yet accepted for tender. In any event, Petitioner's proposal to change its community of license has no adverse impact on any of these applicants. As shown above, no new short spacing is created nor existing short spacing exacerbated.

6. Finally, the staff must reconsider its determination that the only apparent public interest benefit from the proposed reallocation is the station being able to "identify" with Madison and this, according to the Return Letter, was offset by the loss to Kosciusko. This reasoning runs counter to very principles underlying Section 307(b) of the Act and the rules permitting the reallocation of FM stations to from one community to another. *Amendment of Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community*"). Section 307(b) requires the Commission, in distributing radio channels among the several states and communities, to provide for a fair, efficient and equitable distribution. The long established FM allotment priorities have been: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Revision of FM*

Assignment Policies and Procedures, 90 FCC 2d 88 (1982). Petitioner demonstrated that providing a first local service to the larger community of Madison served priority 3 and, therefore, presumptively served the public interest better than continuing to provide service to the smaller community of Kosciusko with its third local service. In this connection, the Commission has stated that both AM stations and noncommercial stations are relevant to a Section 1.420(I) analysis. *Change of Community*, 5 FCC Rcd 7094, 7097 (1990). In sum, Madison is a growing, independent and prosperous town which is entitled to its own radio station under Section 307(b) of the Act and the rules which permit the reallocation of existing stations. Petitioner has pledged to serve the unique needs of Madison and it should, at least, be given the opportunity to make its intentions known in a rulemaking proceeding.

WHEREFORE, the premises considered, it is respectfully requested that the Return Letter be reconsidered and that a Notice of Proposed Rulemaking be issued proposing to reallocate Channel 286C1 from Kosciusko to Madison, Mississippi.

Respectfully submitted,
BOSWELL BROADCASTING, INC.



By: /s/ William D. Silva

William D. Silva

Law Offices of William D. Silva
5335 Wisconsin Avenue, N.W.
Suite 400
Washington, D.C. 20015-2003

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